

## **MEETING MINUTES v.3**

**Committee Name:** Bruce Freeman Rail Trail Committee

**Date, Time and Location of Meeting:**

August 30, 2007, 7:30 AM, Selectmen's Room

**Members Present:**

Jim Terry, Harry Beyer, Gerry Boyle, Elissa Brown, Jim Coutre, Nancy Crowther, Ken Miller, Barbara Pike, Andrea Siani.

**Members Absent:**

Elissa Brown.

**Others Present:**

Town Manager Christopher Whelan, Marcia Rasmussen, Dinny McIntyre, Michael Cusack, Vice President of Claim Operations for MIIA (Massachusetts Interlocal Insurance Association), Bill DeSantis and Tricia Domigan from VHB, and a number of citizens.

**Materials Distributed:**

1. Gerry distributed a map showing a proposed handicapped parking space on town land near Williams Road and on the same side of Old Marlboro Road as the railbed.
2. Jane Coutre distributed a map showing the Old Pickard Trust land which includes a piece of land between the rail bed and White Pond, and a strip on the other side of the rail bed leading to Stone Root Lane.
3. Bill DeSantis distributed a chart showing "Estimated Construction, Maintenance and Rehabilitation Costs for Various Path Surfaces."

**Record of Issues discussed:**

1. Discussion of the paragraph in last week's minutes regarding Town Meeting votes. TM will approve funding, not designs. Unless additional money is requested, TM will not vote on the design or on whether they want a rail trail. Those things COULD be voted on, but we have not made them part of the process to move forward with the trail.
2. Nancy Crowther was thanked for her work as clerk on the committee.
3. Discussion of handicapped parking along the rail bed. Barbara found six handicapped parking spaces in the commuter rail lot, with one in use that particular day. Conversation with a woman who uses an electric scooter indicated that the spaces are conveniently located and not usually filled. So we may not need more spaces north of the Assabet River. The Old Rifle Range parking lot is not a good place for a handicapped space, because the handicapped person would have to cross Old Marlboro Road to get to the trail. The woman indicated she would like to have a handicapped parking space on Williams Road and Powder Mill Road area. The latter location would require a long ramp to get to the trail. Gerry showed a map of the Williams Road area, showing a field owned by the Town on Old Marlboro Road adjacent to the trail. A handicapped parking space

could be put there. Bill of VHB said that Massachusetts regulations require that 1 out of every 25 parking spaces be handicapped accessible. If we add general parking for the trail, we would need to add handicapped parking spaces also. VHB will look at the Williams Road area to see if it is too close to wetlands.

4. Status update by Bill on VHB's work. They have done the initial trail layout, approaching it first by laying it down the center of the tracks. Then they investigated if they could raise or lower the profile, or shift the trail off the tracks to minimize impact and grading. They looked at re-establishing drainage ditches. The wetland mapping has been done, with flags put up. Because of the encroachment of the wetlands on the rail bed, there is some impact, where the amount is in dozens of square feet. The historical study has been done. Wildlife and nesting surveys were done in the spring and summer, with the fall one upcoming. They did not find any species of great concern, threatened or endangered. There are three plant species on the list which could be in the rail bed area, but VHB did not see any of those plants. They are working with the state to verify if these species are there. They do not anticipate that any endangered species will be threatened.
5. Discussion of spreadsheet showing data for the three possible trail surfaces prepared by VHB. The monetary amounts on the spreadsheet were obtained from real projects and an actual bid. These are preliminary numbers; they will have to talk to CPW (Concord Public Works) to get better estimates. For all three surfaces -- asphalt, stabilized gravel, and stone dust -- the underlying layers of the trail are identical in technique, impact, and equipment used.
6. Q: What skills are needed to maintain a stabilized gravel surface? A: Maintenance does require special equipment and is not common in New England. The surface needs consistent trail management and problems need to be addressed right away. This information is from Dan Driscoll of DCR. He uses a specific landscaper to do installation and maintenance. The compaction has to be correct, and the materials right. It is a high maintenance surface.
7. Q: Why are the numbers for stone dust trail maintenance so different than what the Wachusett Greenway people told us? A: They have trail volunteers and teenagers who walk it frequently and do the maintenance right away. VHB does not think that is a realistic approach in Concord, where it would have to be a CPW job. VHB's basis for stone dust costs don't reconcile with Wachusett Greenway presentations and were challenged by Jim Coutre who reminded everyone they are in direct conflict with Wachusett Greenway costs for construction and ongoing maintenance. In ten years the stone dust has never had either a replacement or major repair.
8. Q: Can't the rangers patrolling the trail notice problems if the trail is stone dust? A: They would need to not only notice the problems but also go out with a wheelbarrow to fix them.
9. Discussion by Bill of the spreadsheet on surfaces prepared by our committee. Durability of the different surfaces: there will be edge erosion, and we will need waterways on the edges. There will be a 1% to 2% grade. Slip resistance: this is a handicapped user issue. There are trail designs that are ADA compliant which are not paved. Maintenance of the different kinds of surfaces is the same: dump

- the material, and roll it. Paving machines would be used for installation and maintenance of all three kinds of surfaces, even stone dust. Speed: this would be slower on unpaved surface. Tree impact: the same on all kinds of surface.
10. Discussion of boardwalk as a surface. Pictures of construction of a boardwalk trail were shown. It is 14 feet wide and carries emergency vehicles.
  11. What next for VHB: they will meet with CPW and finalize the access plan for emergency vehicles, they will meet with the MBTA, and they will get an update on White Pond data. They will present environmental and historical information at the public input meeting on September 11th. They will talk to Department of Corrections about parking spots.
  12. Q: How much width is disturbed when the trail is built? A: In addition to the 14 feet for the trail plus shoulders, some additional width is needed for side slopes. Typically 5 to 10 additional feet is given to the contractor to work in. They don't necessarily use it all.-They will identify trees which are not to be disturbed. The total disturbed width, some temporarily disturbed, some permanently, could be 18 to 25 feet. In the Jennie Dugan swamp area, the wetlands are encroaching on the trail. They could constrict the width there. Everywhere, hay bales will delineate the work area. They will spend a lot of time adjusting the edges to minimize the disturbance. There are 25 sheets of plans showing the limits of disturbance, the embankments, etc. One copy has been given to the planning department.
  13. Q: Is there any need for boardwalks? A: No need in Concord. They are expensive and lots of construction is needed.
  14. Q: There are at least two places where the committee has discussed the possibility of shifting the trail off of the rail bed -- between the river and Old Marlboro Rd. and in the commuter parking lot with the trail possibly passing under the active railroad. A from VHB: We are aware and are looking at those.
  15. Next meeting we will be talking about bollards vs. gates at road crossings. We want the pros and cons of each and pictures.
  16. Discussion of the liability issue, by Michael Cusack, Vice President of Claim Operations for MIIA (Massachusetts Interlocal Insurance Association). He said that in the last nine years there has been only one claim involving a bicyclist -- someone didn't see a chain across a trail and flipped.
  17. Q: The Old Pickard Trust residents are very concerned. What are the costs involved in defending a suit involving recreational use? A: Can't quantify that, the residents would need to check with their own insurance companies. Mr: Cusack does not understand why the liability would be any different than it is now, when people walk on the trail. From resident: the number of users goes up significantly, to hundreds of thousands more people. If the risk is minimal, why does the town not grant us indemnification? From Mr. Cusack: Talk to your town manager. Towns do not do that. It is no different than your exposure tonight -- your liability is the same. From a resident: The probability of it occurring is greatly increased when there are 100,000-150,000 people brought in to this area by the Town and thus the risk of each owner for significant expense and time to defend is unfairly born by the abutting owner irrespective of final liability determination. From a committee member: the Friends of the BFRT had people sign a waiver of liability before a trail walk that they led relieving both the

Friends of Bruce Freeman Rail Trail and the Group Leader. A: there is a difference between owning the land and bringing people to the land. The rail bed goes by the Old Pickard Trust land, it does not cross it. This is no different than people living on a road that goes by them.

18. Q: What if the Trust sued the town if the Trust were sued by a victim? A: The costs of suits are not that prohibitive. We can find out cost information if needed.
19. Q: Isn't it true that insurance companies just settle? A: No. There are more defenses available to municipalities, so more cases are defended.
20. Comment from citizen that every ad hoc trail from the rail bed to White Pond goes through Trust property. Where could a rest area be? There is a 10 foot embankment everywhere except on Trust property.
21. Comment from Town Manager Whelan: This liability issue was brought up by Jim Coutre 15 months ago and he asked for an example of a problem. We haven't seen any problem in 15 months. We have lots of public places that go by private property -- route 62, schools. We would have to insure all of those. Comment from citizen: White Pond is a lot more attractive nuisance than route 62.
22. Q: What is an example of a bike path that goes by a nice pond that does not allow swimming? A: Shining Sea bike path.
23. Q: Many people trespass on the White Pond Association beach. The trail will expose the pond to hundreds of thousands of people, which increases the possibility of kids going to the pond. A: The vandalism happens at night, not when people will be biking the trail.
24. Q: Does it not mean more exposure? A: The trail does not increase your liability. It just increases the access. There are hundreds of bodies of water around the state which are accessed today. Comment from committee member: he went on the Cape Cod Rail Trail and went right by a nice pond where people were swimming. No one left the rail trail and went to the pond. Comment that we should talk to the people who run that trail and find out what the issues are. Bill from VHB said he has called the DCR staff regarding this issue.
25. Q: What is the law about children under 12? A: You cannot ascribe fault to a child under the age of reason (12). The defense cannot be that the person didn't know. So its a limitation of defense, not a change in liability.
26. Q from citizen: Our concern is the economic impact, risk, cost of coverage. Isn't the cost different with more people? A: Your exposure is the same, the analysis is the same as now. There is no change to the cost to abutters.
27. Q from citizen: there have been two drownings in White Pond. Are all of us on the west side of the pond liable if they come from the rail trail through our property? A: In our society, anyone can sue anyone any time. If someone drowns it does not mean that the person who lives close to it is responsible.
28. Q: Statistically the number of people going near the pond will be higher. Why is our risk not higher? A: The rail trail doesn't change anything. It is no different than a street going by your house. It does not mean that the town has to insure everyone; they can't.
29. Comment that we will need to erect barriers and signage to keep people out of the pond, and so protection will be better than it is now. Q: What is the duty of the

town to make it clear where you can go? The signs are stolen. A: The town must make it clear where it is safe and what is legal.

30. Mr. Whelan: there are lots of minimal risks that the town does not cover: people near schools, waste treatment areas, etc. We don't insure them.

31. Q: How does the town reconcile watching people swim at the cove at White Pond? There are lots of people there. A: The town has provided rangers. The laws are written in such a way that towns have immunity. Generally lawsuits are not successful.

32. The next meetings will be the September 11th public input meeting and the committee meeting on September 13th.

33. The meeting was adjourned at 9:15 AM.

**Votes Taken:**

1. The minutes from August 23rd were approved.

**Citizen Comments:**

1. Abutter: who owns the trail? A: EOT will own the trail and we will lease it.
2. Abutter: it is offensive to see pictures of White Pond, taken across my land, on the BFRT public information.
3. Bob Armstrong said that Mass Highway has issued the order to proceed on Phase I of the BFRT, which starts at Cross Point Towers and runs to near the intersection of routes 27 and 225, for a total of 6.8 miles. The winning bid came in under budget at about \$600K per mile, for a total of \$4.3 million.
4. Citizen: who will be responsible for the costs of maintaining and replacing the trail? A: taxpayers.
5. Judy LaRocca: In Brewster on the Cape Cod Rail Trail, Sheep Pond has private beaches. We should talk to those people and see what the issues are.

**Recorder Name:**

Nancy Crowther